

# CONNECTICUT ASSOCIATION OF HEALTH CARE FACILITIES, INC.

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**Testimony of Matthew V. Barrett, Executive Vice President of the Connecticut Association of Health Care Facilities (CAHCF) before the Judiciary Committee - March 19, 2012 H.B. NO. 419 (RAISED) AN ACT CONCERNING RESPONSIBLE PARTY AGREEMENTS AND THE MAINTENANCE OF PROFESSIONAL LIABILITY INSURANCE BY NURSING HOMES, HOME HEALTH CARE AGENCIES, AND HOMEMAKER-HOME HEALTH AIDE AGENCIES.**

Good afternoon Senator Coleman, Representative Fox, and to the members of the Judiciary Committee. My name is Matthew V. Barrett. Thank you for this opportunity to testify on behalf of the Connecticut Association of Health Care Facilities (CAHCF), our state's one hundred and forty-nine member trade association of post-acute, transitional and long term care nursing homes. I am here this evening to testify on S.B. No. 419 (RAISED) AN ACT CONCERNING RESPONSIBLE PARTY AGREEMENTS AND THE MAINTENANCE OF PROFESSIONAL LIABILITY INSURANCE BY NURSING HOMES, HOME HEALTH CARE AGENCIES AND HOMEMAKER-HOME HEALTH AIDE AGENCIES

This legislation, in part, addresses the very important issue of assuring that applicant's and those acting on their behalf have clear and concise notice about their responsibilities in the Long Term Care Medicaid application process. This is a protection for both the applicant and the nursing home where admission is sought.

Importantly, the bill preserves the circumstances under which a contract may include provisions authorizing recourse when there has been an inappropriate transfer of assets or when there is a failure to follow through with the Medicaid application process.

It is far too often the case that Connecticut nursing homes, through no fault of their own, are left providing nursing home care without any payment from public or private sources. Almost all nursing home bad debts result from the failure of a family member or the resident's legal representative to apply and obtain approval for Medicaid assistance in a timely manner or when property or money has been given away by the resident. Nursing homes are in reliance of the family member or legal representative to take the appropriate steps to obtain Medicaid assistance. The nursing home simply does not, and could not possibly, have access to the extensive, detailed personal financial information required to complete an application for Medicaid assistance.

Other bad debts occur when the resident has given away money or property during the five-year look back period and is therefore ineligible for Medicaid assistance for a period of time, triggering a transfer of assets penalty period, or when the applicant or responsible party fails to pay applied income amounts, usually monthly Social Security benefits, to the nursing home.

Nursing home bad debts caused by failure to file or incomplete Medicaid applications and transfers of assets cost Connecticut providers hundreds of thousands, if

not millions of dollars every year. These harmful losses are avoidable with the cooperation of a family member or resident's legal representative.

The bill, as drafted, regrettably weakens the rare protection nursing homes have under the law to encourage responsible behavior and to enforce promises that third parties make when seeking admittance to a nursing home, mostly on behalf of a family member.

Today the law prohibits nursing homes from enforcing contracts under which another person, known as a guarantor, promises to pay a nursing home applicant's or resident's bill. However, the current law does not prevent a nursing home from asking responsible parties in an admissions agreement to make certain, reasonable promises, which may include: requiring that if the responsible party has control of or access to the resident's assets, that the assets be used for the resident's welfare, including making prompt payment for services to the resident; taking the steps necessary to properly spend down those assets and to cooperate with DSS in facilitating Medicaid assistance approval; and using any resident assets transferred to the responsible party resulting in the resident's ineligibility for Medicaid assistance to pay for the cost of the resident's care until such time as the resident is determined to be eligible for Medicaid. These requirements are not only proper and legal under federal law but they are vital to the financial stability of nursing homes. Accordingly, the bill should be amended to assure nursing homes continuing to be protected in this manner.

In addition, we recommend the following substitute language:

“-Add new subsection (e): (e) This section shall apply to all nursing home contracts with residents or the resident's representative executed on or after October 1, 2012.

-On line 19, add under (2): the applicant fails to TIMELY FILE or return a properly completed application....

-On line 38, insert after "shall", BE IN A LANGUAGE THAT THE APPLICANT OR APPLICANT'S REPRESENTATIVE UNDERSTANDS and delete the remainder of the sentence. This is advisable to avoid situations where a contract may be void if not written in the primary language, even though the applicant has full English proficiency and understanding.”

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